



**Osuka v Mama Watoto Supermarket Limited (Cause E005 of 2025)
[2026] KEELRC 60 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 60 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E005 OF 2025
DN NDERITU, J
JANUARY 23, 2026**

BETWEEN

ELPHAS OSUKA CLAIMANT

AND

MAMA WATOTO SUPERMARKET LIMITED RESPONDENT

JUDGMENT

I. Introduction

1. Through Were Lukoko & Co Advocates the claimant commenced this cause by way of a statement of claim dated 27th January 2025 seeking for the following reliefs –
 - a. Adoption of the Director’s award of Kshs.74,248/= as the judgement of this court.
 - b. Costs and interest of this claim.
 - c. Any other and/or further relief this Honourable court may deem fit and/or just to grant.
2. As it is the procedure, the statement of claim was accompanied with a verifying affidavit sworn by the claimant, a list of witnesses, his written statement, a list of documents, and copies of the listed documents.
3. The respondent entered appearance through the firm of Nyikuli, Shifwoka & Company Advocates and filed a memorandum of response dated 14th April 2025 seeking for the dismissal of the claim with costs, alleging the claim was settled.
4. The response was accompanied with a written statement by Stephen Ngige, the respondent’s human resource manager, a list of witnesses and documents with copies of the listed documents attached.
5. On 11th June 2025 the respondent filed a supplementary list of documents and a copy of the listed document and a video recording.



6. On even date, counsel for both parties agreed, and the court so directed, that the cause be heard and canvassed by way of written submissions.
7. Mr. Were for the claimant filed written submissions dated 13th June 2025 and Mr. Shifwoka for the respondent filed written submissions dated 14th October 2025.

II. The Claimant's Case

8. The claimant's case is expressed in the statement of claim, his witness statement, the documents filed, and the written submissions by his counsel.
9. In the statement of claim it is pleaded that the claimant while employed by the respondent in 2017 as a bakery assistant sustained burn injuries on 20th November 2023.
10. It is further pleaded that the injury was reported to the Directorate of Occupational Safety and Health Services (DOSHS) who, after conducting a second medical examination, assessed the degree of injury to the claimant and awarded him compensation at Kshs74,248/=.
11. It is pleaded that despite demand made for the respondent to pay the compensation the respondent has failed, refused, and or neglected to act rendering this cause necessary to enforce the award.
12. It is on the basis of the foregoing circumstances and facts that the court is urged to adopt the director's award of Kshs74,248/- as judgment of this court.

III. The Respondent's Case

13. The respondent's case is contained in the memorandum of response to the claim, documents filed, the written statement by Stephen Ngige, its human resource manager, and the written submissions by its counsel.
14. In the said response, it is admitted that the claimant indeed sustained injuries but it is alleged that the claimant deliberately and negligently spilt hot oil on himself for which the respondent pleads contributory negligence.
15. It is further pleaded that upon assessment of the injuries sustained by the claimant, the respondent in a bid to alleviate the burden of the lump sum compensation assessed made periodic payments to the claimant from the month of December 2023.
16. It is pleaded that pursuant to Section 30 of the *Employment Act* (the Act) the claimant was entitled to 7 days' sick leave with full pay and a further 7 days' sick leave with half pay.
17. It is pleaded that the respondent made the following payments in excess of the award –
 - a. December 2023- Kshs8,463 half pay on account of 7 days' sick leave
 - b. January, 2024- Kshs16,929/- paid without the claimant reporting for duty;
 - c. February, 2024- Kshs8,463/= as the claimant only worked for 14 days; and
 - d. 18th December, 2024- Cheque No. 000439 of Kshs32,498/= deposited with the Kakamega County Occupational Safety office.
18. It is pleaded that the awarded sum has been settled to the tune of Kshs66,350/= and the difference of Kshs 7,898/= made toward permissible deductions under Section 19 of the Act.



19. The respondent asserts that the claimant through his counsel was informed of where to collect the remittance of Ksh32,497/-.
20. It is pleaded that the present cause is unmeritorious, and if the adoption sought was allowed it would result in double payment as the respondent has sufficiently and already settled the assessed award.
21. It is on the basis of the foregoing evidence and circumstances that the respondent prays that the claimant's cause be dismissed with costs.

IV. Submissions

22. On the one hand, counsel for the claimant identified four issues for determination by the court – Whether the claimant lodged a claim with the Directorate of Occupational Safety and Health Services; Whether the Directorate of Occupational Safety and Health Services issued a demand for payment; Whether the respondent lodged an objection with the director against the award; and, Whether this court is clothed with jurisdiction to enforce an award issued by the Director of Occupational Health and Safety Authority.
23. On the first issue, it is submitted that the claimant lodged a claim with DOSH and on 29th November 2023 directed the respondent to complete the DOSH Form 1. It is submitted that the respondent vide its letter of 14th December 2023 advised the claimant to appear for a second medical examination which he opposed. It is further submitted that the County Occupational Safety and Health Officer vide his letter dated 12th January 2024 conducted a second medical examination before its medical board at Nakuru DOSH Offices on 23rd January 2024 and subsequently assessed the claimant's compensation.
24. On the second issue, it is submitted that DOSH issued a demand notice to the respondent for Kshs74,248/=.
25. On the third issue counsel cited a plethora of decisions namely – Stephen Wangusi Nyongesa v Dot.com Bakery Limited (2022)eKLR, Hadisha Engineering Co. Ltd & another versus Benson Chege Karoki (2015)eKLR; and Joash Shisia Chero v The Pot Patrick Charles (2022)eKLR, submitting that pursuant to the provisions of Section 26(4) of the Work Injury Benefits Act (WIBA), the respondent was required to settle the award by DOSH within 90 days and pursuant to the provisions of Section 51(1) of WIBA. The respondent was had a right to raise an objection to the award but did not raise any within 60 days as provided for. It is submitted that the issuance of a cheque by the respondent less the assessed sum by the Director was ill-advised and unlawful as it did not settle the account.
26. It is submitted that the respondent's memorandum of response and the written statement by Stephen Ngige were in the form of an objection, which ought to have been addressed to DOSH when the respondent was served with the award demand.
27. On the fourth issue counsel cited Joash Shisia Chero (supra) and Ruth Wambui Mwangi & Another v Alfarah wholesalers Limited (Supra) asserting that while WIBA has no enforcement mechanism for DOSH awards, Section 87 of the Act, Section 12 of the Employment and Labour Relations Court Act, and Article 162 of the Constitution empower the court to consider these proceedings for enforcement of an award and in the interest of justice.
28. On the other hand, counsel for the respondent submitted globally seeking contribution on liability, an issue counsel argues was beyond the jurisdiction of DOSH. It is submitted that the basis for seeking contribution is premised on the evidence adduced before the court allegedly showing that the claimant negligently spilt hot oil on his right hand, in the video graphic and CCTV extract adduced.



29. It is submitted that from the month of December 2023 the respondent overpaid the claimant through periodic payments in excess of the award which was subsequently assessed at Kshs74,248/=. It is further submitted that the claimant, pursuant to the provisions of Section 30 of the Act, was paid the assessed compensation less permissible deductions.
30. It is submitted that should the court be inclined to allow the adoption of the award, it should take into consideration that the award has already been settled.

V. Issues For Determination

31. The court has carefully and dutifully gone through the pleadings filed, documentary evidence tendered from both sides, and the written submissions by counsel for both parties. The issues for determination are –
 - a. Whether the court should adopt the DOSH award made on 7th May 2024 as the court's order and issue a decree thereon.
 - b. Whether the respondent has settled the award.
 - c. Costs.

VI. Adoption Of Award

32. The fact that the claimant was injured at work on 20th November 2023 is not denied. Indeed, the respondent has admitted to the injury but denies full liability for the same. The Respondent through a letter dated 14th December 2023 directed the claimant to undergo a second medical examination to OSHA office at Nakuru then directed the claimant to undergo a second medical examination on 12th January 2024 at its Nakuru DOSH Office and a second opinion was thus obtained.
33. Thereafter, the Director assessed the claim based on the second medical report and awarded Kshs74,248.72/= in compensation. The Respondent was notified of the award.
34. The respondent asserts that before the award was made on 7th May 2024 it made periodic payments to the claimant from December 2023 in an effort to settle the would be assessed award to the tune of Kshs66,350/=.
35. Under WIBA, upon the DOSH assessment and award, an employer is obligated to settle the same within 90 days. Upon the lapse of that timeline, if there is no objection or appeal against the DOSH award, an injured employee may file proceedings for the enforcement of the award with the court.
36. Section 51 of WIBA provides –
 1. Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.
 2. The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.'
37. The evidence adduced on record confirms that no objection or appeal to the award was filed. There being no objection or appeal the award of Kshs74,248/= is hereby adopted as the judgement of this court and a decree shall issue accordingly.



VII. Settlement Of The Award

38. In its memorandum of response, the respondent alleges that the award of Kshs74,248/= has been partly settled through periodic payments made to the claimant. The alleged payments were allegedly made in the form of monthly pay as follows –
- a. November 2023 - paid full pay of Kshs17,417/-
 - b. December 2023 - Kshs8,463/- half pay on account of 7 days sick leave;
 - c. January 2024 - Kshs16,929/- paid without the claimant reporting for duty;
 - d. February 2024 - Kshs8,463/- as the claimant only worked for 14 days.
39. The above payments are evidenced by the adduced payslips. Vide the respondent's incident report dated 12th February 2024. The claimant took sick leave from 20th November 2023 to 12th February 2024 during which period the claimant received the monthly payments as evidenced by the payslip from November 2023 to February 2024 above.
40. The respondent further issued a cheque of Kshs32,497/= in favour of the claimant, which is deposited with the OSHA County office. The Claimant is yet to collect the same.
41. In the months of December, 2023 and February 2024 the claimant received half pay instead of the full pay. The respondent alleges that the claimant was paid half-pay because he was only entitled to half pay with 7 days sick leave and that the claimant worked for 14 days only respectively. The respondent agreed that of the awarded sum, a total of Kshs66,350/= has been paid, with the difference of Kshs 7,898/= paid out as permissible deductions pursuant to Section 19 of the Act.
42. The court has looked at the payslips adduced by the respondent and notices that the statutory deductions were deducted. The respondent has not stated the other deductions contemplated. The respondent did not object to the award assessed at Kshs74,248/=. The claimant was thus entitled to the full amount assessed by DOSH.
43. The Claimant was entitled to the payments made in leave-pay and salary for days worked. The award by DOSH was in respect of the injury suffered and not in salaries or other remuneration to the claimant. He was entitled to the same as of right and that did not take away his entitlement to the award made by DOSH following the injury at work.

VIII. Orders

- a. This cause is allowed as follows –
- i. The Director's award of Kshs74,248/= is hereby adopted as the judgement of this court and a decree shall issue accordingly.
 - ii. The Respondent is free to collect the cheque deposited with DOSH as the same is certainly stale by now.
 - iii. The awarded sum shall attract interest from the date of this judgment till payment in full.
 - iv. Costs of this cause to the claimant.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 23RD DAY OF JANUARY, 2026.

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DAVID NDERITU
JUDGE

